

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6833

Petition of Dalton Hydro, LLC, for a certificate of public)
good to own and operate certain hydroelectric generating)
facilities located at the Gilman Dam in the Town of)
Gilman, Vermont, and for de minimis regulation)

Order entered: 7/17/2003

PRESENT: Judith M. Kasper, Esq.
Hearing Officer

APPEARANCES: Geoffrey Commons, Esq.
for Vermont Department of Public Service

David John Mullett, Esq.
for Dalton Hydro, LLC

Morris L. Silver, Esq., and
Kenneth L. Picton, Esq.
for Central Vermont Public Service Corporation

I. INTRODUCTION

On March 26, 2003, Dalton Hydro, LLC ("Dalton") filed a petition with the Public Service Board ("Board") requesting issuance of a certificate of public good ("CPG") pursuant to 30 V.S.A. § 231, and for de minimis regulation. This docket was opened in response to that petition, and pursuant to 30 V.S.A. § 8, I was appointed Hearing Officer for this proceeding.

On April 28, 2003, a prehearing conference in this docket was held. In attendance were: Dalton, represented by David John Mullett, Esq.; Central Vermont Public Service Corporation ("CVPS") represented by Morris Silver, Esq., and Kenneth Picton, Esq.; and the Vermont Department of Public Service ("Department") represented by Geoffrey Commons, Esq. At the prehearing conference, I granted CVPS' motion to intervene in this docket, and set a schedule for

proceeding consistent with the parties' representation that they anticipated filing a stipulation that would resolve all the issues in this case.

On May 13, 2003, the parties filed a Stipulation and Agreement ("Stipulation") along with a Non-levelized Energy Sale and Purchase Agreement ("Energy Agreement") which incorporates a General Interconnection Agreement ("Interconnection Agreement").

On June 5, 2003, the parties filed a revised Attachment A to the Energy Agreement.

On June 20, 2003, the parties filed a Supplemental Stipulation and Agreement ("Supplemental Stipulation"), an affidavit of Stephen Harmsen concerning the experience and qualifications of Dalton Hydro, LLC, and FERC form L-3.

My proposal for decision reviews these documents, and recommends that the Board issue the requested CPG as well as grant Dalton's request for de minimis regulation.

In accordance with the provisions of the Supplemental Stipulation, I hereby admit the following items as evidence in this proceeding:

1. The Petition for Certificate of Pubic Good filed March 26, 2003, and Exhibits A through E attached thereto.
2. The Stipulation, Energy Agreement (including revised Attachment A filed June 5, 2003), and Interconnection Agreement.
3. The affidavit of Stephen Harmsen concerning the experience and qualifications of Dalton Hydro, LLC.
4. FERC form L-3.¹

II. FINDINGS

In accordance with the provisions of 30 V.S.A. § 8, I report the following to the Board.

1. Dalton is a limited liability company organized under the laws of the State of Utah. Dalton holds a certificate of organization from the Vermont Secretary of State. Pet. par. 1, Pet. Exhs. A and B.

1. Under paragraph D of the FERC license (found on Page 17 of Pet. Exh. E) that license is subject to the standard articles set out in FERC form L-3.

2. The generating facility that is the subject of this petition (the "Project") is a 4,850 total kW hydroelectric generating facility located at the Gilman Dam in the Town of Gilman, Vermont. Pet. par. 2, Pet. Exhs. C and E.

3. The Project works consist of the Gilman Dam, a reservoir of about 130 acres, a powerhouse containing four turbine generator units, and a short transmission line. Pet. par. 2, Pet. Exh. C.

4. The Project, as well as a paper mill adjacent to the Project, were owned by American Paper Mills of Vermont, Inc. ("APV"). Pet. par. 3.

5. In 2002, APV entered Chapter 11 Bankruptcy in what became case no. 02-10923 in the United States Bankruptcy Court for the District of Vermont ("Bankruptcy Court"). Pet. par. 4, Pet. Exh. C.

6. The Bankruptcy Court ordered a sealed bid sale of the APV assets, including the Project and the adjacent paper mill. Pet. par. 4, Pet. Exh. C.

7. SRC Corporation d.b.a. Steve Regan Company ("Regan") was the successful bidder in the bankruptcy sale. Pet. Exh. D.

8. Dalton is the assignee of the rights obtained by Regan through the bankruptcy sale. Pet. par. 5.

9. The Stipulation supports issuance of a CPG solely to Dalton. Stipulation par. 2(e).

10. Dalton has substantial experience in the successful operation of hydroelectric projects in Utah and Idaho. Affidavit of Stephen Harmsen.

11. The Project holds FERC license 2392-004, a 30-year license dated April 13, 1994.² Pet. Exh. E.

12. Dalton has represented that an application for transfer of the FERC license to Dalton will be filed and will be provided to the Board.³ Pet. par. 9, at p. 2.

2. The FERC license was issued to Simpson Paper (Vermont) Company which changed its corporate name to American Paper Mills of Vermont. Letter of David John Mullett, June 19, 2003, at p. 1.

3. Dalton has represented that it was advised by FERC staff that the sale by the Bankruptcy Trustee constituted a judicial sale within the meaning of standard article 5 to the license, and that, therefore, transfer of the FERC license subsequent to transfer of the property is appropriate. Petition par. 9 at p. 2; FERC form L-3, Article 5 at p. 2.

13. Dalton and CVPS will enter into a Non-levelized Energy Sale and Purchase Agreement for sale of excess power from the Project to CVPS under a short-term, market-based pricing arrangement.⁴ Energy Agreement.

14. Dalton and CVPS will enter into a General Interconnection Agreement for the Project. Interconnection Agreement.

III. DISCUSSION

Issuance of Certificate of Public Good to Dalton

In this docket, Dalton seeks a CPG so that it can own and operate, with de minimis regulation, FERC Hydroelectric Project P-2392-004, a generating facility located at the Gilman Dam. Dalton has represented that the Project is the only electric facility that it will own and operate in Vermont, and that power generated at this facility will be sold only at wholesale pursuant to market-based rates.⁵ In addition, the parties have entered into a Stipulation and a Supplemental Stipulation in which they agree that Dalton's request for a CPG with de minimis regulation should be granted. The parties have requested Board approval for these agreements.

For the reasons discussed below, I recommend that the Board approve the parties' Stipulation and Supplemental Stipulation, and issue to Dalton a CPG with de minimis regulation.

The statutory standard for Board issuance of a CPG is whether the proposed ownership and operation of the business will promote the general good of the state.⁶ To that end, the Board has established a set of criteria to be used as guidelines when determining whether an entity should be granted a CPG. These criteria are:

4. Energy delivered pursuant to the Energy Agreement will be priced at 90% of the Locational Marginal Price of generation asset number 737 at node no. 4446 published by ISO New England, Inc., as reflected in its monthly settlement reports; no payments will be due for capacity, tradable renewable energy certificates, generation information certificates, ten-minute spinning reserve, ten-minute non-spinning reserve, thirty-minute operating reserve or automatic generation control, regardless of whether Dalton delivers such products or services or whether such services are provided or available from Dalton under the Energy Agreement. Energy Agreement, Revised Attachment A filed June 5, 2003.

5. Stipulation at pp. 1-2; tr. 4/28/03 at 7-8.

6. 30 V.S.A. § 231(a).

1. Technical expertise;
2. Adequate service;
3. Facility maintenance;
4. Balance between customers and shareholders;
5. Financial stability;
6. Company's ability to obtain finance;
7. Business regulation; and
8. Relationship with customers.⁷

The Board has treated the above criteria as guidelines only, because 30 V.S.A. § 203 permits the Board and the Department to exercise their jurisdiction "so far as may be necessary to enable them to perform their duties and exercise the powers conferred upon them by law." Hence, the Board's regulatory authority over Dalton may be applied to reflect the limited activities Dalton plans to undertake in Vermont, and the Board may issue a CPG that reflects those limited activities.⁸

The evidence demonstrates that Dalton meets the criteria that are applicable to its circumstances. Dalton has significant experience in the operation of hydroelectric projects in the states of Utah and Idaho, and it will have experienced staff on site at the Project.⁹ Financing for the purchase of the Project is not a concern here because the Project was sold under the auspices of the Bankruptcy Court.¹⁰ Also, relationships with customers, and balance between customers and shareholders, are inapposite considerations given Dalton's circumstances as a company without retail customers.¹¹

I note that there is no evidence in the record here concerning either the particulars of the agreement between Regan and Dalton or Dalton's financial stability. Nevertheless, in this particular case, there appears to be minimal risk of harm to the public good should the Project cease operating because of a failed relationship between Regan and Dalton, or weakness in

7. See *Petition of New England Power Company*, Docket No. 6039, Order of June 29, 1998, at 17.

8. *Id.*

9. Affidavit of Stephen Harmsen.

10. United States Bankruptcy Court District of Vermont Case No. 02-10923, Order of 2/27/03; tr. 4/28/03 at 13.

11. See *Petition of New England Power Company*, Docket No. 6039, Order of June 29, 1998, at 17.

Dalton's financial stability. The evidence here shows that the project is small, the contract between Dalton and CVPS is short-term, and, as discussed above, Dalton has no retail customers. Because of Dalton's specific situation, I am satisfied Dalton meets the criteria for granting a CPG that are applicable to its circumstances.

Based on my review of the record in this docket, I conclude that granting Dalton a CPG to own and operate FERC Hydroelectric Project P-2392-004 is in the general good of the state. Issuance of the requested CPG will advance operation and maintenance of a renewable energy resource.¹²

I recommend, therefore, that the Board issue a CPG to Dalton to own and operate the Project, in the form attached hereto, appropriately limited to reflect the facts in this proceeding. As discussed above, the Project is the only electric facility that Dalton will own and operate in Vermont, and power generated at this facility will be sold only at wholesale pursuant to market-based rates. Hence, Dalton will not look to Vermont ratepayers to receive any recovery of its costs.¹³ In light of this, I conclude that full, traditional utility-type regulation of Dalton at the state level is unnecessary to enable the Board to perform its duties and powers conferred by Title 30.

Because extensive state regulation of Dalton is not needed under the circumstances applicable to its petition, I recommend that the CPG should contain the following requirements:¹⁴

- (a) Any amendments of the FERC Hydroelectric Project P-2392-004 ("Project") license shall be filed with the Board and the Department;
- (b) Any FERC filings related to the Project, including but not limited to filings related to Dalton's market-based rates, shall be filed with the Board and the Department;

12. Petition at p. 2.

13. Dalton's activities will be subject to FERC regulation under the Federal Power Act. Dalton and the Department have agreed to suspend any prospective disagreement about the extent of Board jurisdiction over Dalton, and they have requested Board approval for the Energy Agreement and the Interconnection Agreement to the extent that such may be deemed required. *See*, Stipulation at pp. 2 and 3.

14. The parties have agreed that these conditions should apply to the CPG. Stipulation at pp. 2-3.

- (c) Dalton shall comply with the Vermont Dam Safety Act, 10 V.S.A. § 1081 *et seq.*, to the extent that such requirements are not inconsistent with requirements imposed by FERC in connection with its regulation of the Project;
- (d) Dalton shall not be required to make any filings with the Board or the Department pursuant to 30 V.S.A. § 108 governing financing;
- (e) Dalton shall notify the Board and the Department within fourteen days of any changes in the ownership of entities involved in the operation of the Project under 30 V.S.A. § 231;
- (f) Any CPG issued in this docket may not be transferred without approval of the Board;
- (g) Any CPG issued in this docket shall not apply to the steam generation facilities located on the paper mill site, absent future approval by the Board; and
- (h) Any CPG issued in this docket shall not grant to Dalton the right to engage in the sale or provision of electricity to the paper mill adjacent to the Project should that paper mill be owned or operated by an entity other than Dalton.¹⁵

Board Review of the Energy Agreement and the Interconnection Agreement

In conjunction with the petition, Dalton and CVPS have submitted a proposed Non-levelized Energy Sale and Purchase Agreement which incorporates a General Interconnection Agreement. The parties acknowledge that there may be some question about whether and to what extent Board approval of these agreements may be required. However, they have represented that they do not believe it is necessary to resolve these issues, because they have requested that the Board approve these agreements to the extent deemed required, without precedential impact.¹⁶

I agree that these issues need not be resolved in this case, and that it is appropriate for the Board to approve these agreements "to the extent required, without precedential impact." As

15. Dalton does not propose to own or operate the paper mill. Tr. 4/28/03 at 7.

16. Stipulation at p. 3.

discussed above, the requests here involve approval for Dalton to sell CVPS energy produced by the Project at wholesale under a short-term, market-based pricing arrangement, with interconnection as needed solely for this purpose. In addition, I am satisfied that the conditions recommended for the CPG provide adequate assurance that future Board approvals will be sought whenever necessary.

IV. CONCLUSION

For the reasons discussed above, I recommend that the Board approve the Stipulation and Supplemental Stipulation submitted by the parties. I further recommend that the Board approve the Non-levelized Energy Sale and Purchase Agreement which incorporates a General Interconnection Agreement to the extent required, without precedential impact. Finally, I recommend that the Board issue to Dalton a CPG pursuant to 30 V.S.A. § 231, with de minimis regulation, and conditioned as specifically set forth above.

Consistent with the provisions of 3 V.S.A. § 811, this proposal for decision has not been circulated to the parties for comment because it accepts the Stipulation and, therefore, it is not adverse to any party.

Dated at Montpelier, Vermont, this 16th day of July, 2003.

s/Judith M. Kasper
Judith M. Kasper
Hearing Officer

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted.
2. The Stipulation and Agreement filed by the parties on May 13, 2003, and revised Attachment A to that stipulation, filed on June 5, 2003, are hereby approved.
3. The Supplemental Stipulation and Agreement filed by the parties on June 20, 2003, is hereby approved.
4. The Non-levelized Energy Sale and Purchase Agreement and the General Interconnection Agreement incorporated therein are hereby approved to the extent required under Title 30 of the Vermont Statutes. This approval is intended to be without precedential effect.
5. Pursuant to 30 V.S.A. § 231, a certificate of public good that includes the conditions recommended by the Hearing Officer herein shall be issued to Dalton Hydro, LLC for ownership and operation of the FERC Hydroelectric Project P-2392-004, a generating facility located at the Gilman Dam.
6. This docket shall be closed.

Dated at Montpelier, Vermont, this 17th day of July, 2003.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: July 17, 2003

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.